

ADAMS, J.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

GREGORY M. NOLFI, etc., et al.,)	LEAD CASE NO. 5:06CV0260
)	5:06CV0506
Plaintiffs,)	
)	JUDGE JOHN R. ADAMS
v.)	
)	<u>ORDER</u>
OHIO KENTUCKY OIL)	
CORPORATION, et al.,)	
)	
Defendants.)	

On May 16, 2008, the within matter came on for a telephone conference pursuant to

Local Rule 37.1 upon the following:

- 1.) a letter dated March 21, 2008, with attachments, from Dennis R. Rose, one of the attorneys for plaintiffs;
- 2.) a letter dated March 31, 2008, from Thomas W. Connors, one of the attorneys for defendants;
- 3.) a letter dated April 4, 2008, from Attorney Rose; and
- 4.) a letter dated April 18, 2008, from Attorney Rose.

The conference was adjourned until May 19, 2008, so the Court could hear from Johnnie Y. Spaulding and any other individual involved with the record keeping of defendant Ohio Kentucky Oil Corporation ("Ohio Kentucky").

This action is presently before the Court upon plaintiffs' Memorandum in Support of Discovery Sanctions Pursuant to Fed. R. Civ. P. 37 (Doc. 114). The Court has considered defendants' response (Doc. 115). The Court has also considered the oral arguments of counsel

offered during the hearings held on the record on May 16 and 19, 2008.¹ Plaintiffs move the Court for an order excluding the entire testimony of Mr. Spaulding (including all subjects addressed in his affidavit (Doc. 64-5)) or, in the alternative, for immediate entry of judgment as a matter of law in favor of plaintiffs for the entire case or on plaintiff Fencorp Co.'s Blue Sky non-registration claim upon the grounds that the plaintiffs do not have the documents that were requested in discovery that they would use to rebut defendants' *prima facie* case on the registration claim.

On December 22, 2004, plaintiffs Gregory M. Nolfi, as successor Trustee under the Frederick E. Nonneman Declaration of Trust dated August 19, 1994, as amended, Frederick E. Nonneman, and Rena Nonneman filed a complaint against defendants Ohio Kentucky, Carol L. Campbell, individually, and Carol L. Campbell, as Executrix of the Estate of William M. Griffith, Deceased in the Cuyahoga County, Ohio Common Pleas Court, being Case No. CV-04-550444 (the "Cuyahoga County Action"). The Cuyahoga County Action was not a securities fraud case; rather, the plaintiffs' central theories were undue influence, common law fraud, breach of contract, and breach of fiduciary duty arising from the allegation that over 90% of the oil and gas wells drilled by the defendants resulted in dry holes. On January 5, 2006, the plaintiffs voluntarily dismissed their Cuyahoga County Complaint without prejudice.

The very next day, on January 6, 2006, the defendants commenced an action in the Stark County, Ohio Common Pleas Court, being Case No. 2006CV00078 (the "Stark County Action"). Defendants sought declaratory relief as to essentially the same allegations raised in the plaintiffs' original Cuyahoga County Complaint. On February 7, 2006, the plaintiffs filed their Answer and

¹Transcripts (Docs. 95 and 116).

